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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, **Plaintiff and Respondent,** **v.** **JAMES MITCHELL LeFEVER,** **Defendant and Appellant.**	**A125308** **(Sonoma County Super. Ct. Nos. MCR-428341, MCR-434938, TCR-438487)**

Defendant James Mitchell LeFever (appellant) was sentenced to seven years in state prison following the revocation of his probation. Pursuant to Penal Code section 1203.2a, he contends the trial court lacked jurisdiction to order execution of the previously imposed and suspended prison term. We reject the contention and affirm.

BACKGROUND

Since this appeal involves only issues regarding sentencing, a detailed recitation of background facts is unnecessary.

In October 2003, appellant pled no contest in Sonoma Superior Court case No. MCR-428341 (*LeFever 1*) to unlawful driving or taking a vehicle without the owner's permission (Veh. Code, § 10851, subd. (a)) in exchange for the dismissal of the remaining charges in that case, the dismissal of case No. MCR-429017 (*LeFever 2*) with a *Harvey* waiver (*People v. Harvey* (1979) 25 Cal.3d 754, 758), and a grant of probation. In December, the court suspended imposition of sentence and placed him on three years' probation with conditions including successful completion of a drug treatment program.

Pursuant to the plea bargain, the remaining charges in *LeFever 1* and *LeFever 2* were dismissed.

On February 5, 2004, the probation department requested that the court summarily revoke appellant's probation in *LeFever 1* for failing to obey all laws and failing to complete the previously ordered drug treatment program. Also on February 5, a complaint was filed in case No. MCR434938 (*LeFever 3*) charging appellant with taking a car without the owner's permission with a prior conviction for that offense (Veh. Code, § 10851, subd. (a); Pen. Code, § 666.5), receiving stolen property (Pen. Code, § 496d, subd. (a)), and misdemeanor driving without a valid license (Veh. Code, § 12500, subd. (a)). Appellant admitted violating his probation in *LeFever 1* and pled guilty in *LeFever 3* to taking a car without the owner's permission with a prior conviction for that offense (Veh. Code, § 10851, subd. (a); Pen. Code, § 666.5.) In exchange, it was agreed that the other charges in *LeFever 3* would be dismissed and appellant would be placed on probation after suspending execution of a four-year prison term.

In March 2004, a complaint was filed in case No. TCR-438487 (*LeFever 4*) charging appellant with taking a car without the owner's permission with a prior conviction for that offense (Veh. Code, § 10851, subd. (a); Pen. Code, § 666.5). Appellant pled guilty to those charges. In exchange, it was agreed he would receive a one-year sentence consecutive to the sentences in *LeFever 1* and *LeFever 3*, with execution suspended on the condition that he participate in residential drug treatment.

In June 2004, appellant was sentenced to five years eight months in state prison as follows: the upper four-year term in *LeFever 3*, plus a one-year term (one-third the midterm) in *LeFever 4* plus an eight-month term in *LeFever 1*. Execution of sentence was suspended and appellant was placed on three years' probation on conditions including that he serve 12 months in jail and then be placed in residential treatment.

In August 2005, the probation department twice requested that the court summarily revoke appellant's probation due to his August 7 arrest for violating probation and failing to abstain from drugs and alcohol. On August 30, he admitted violating his probation by testing positive for methamphetamine and marijuana.

In October 2005, the court extended appellant's probation to five years and reinstated it, and appellant waived all past, present and future credits in *LeFever 1*, *LeFever 3* and *LeFever 4*.

In January 2009, the court granted the probation department's request that the court summarily revoke appellant's probation on the ground that appellant was in custody in Yolo County and had been convicted of first degree burglary committed in December 2008 in Yolo County case No. 08-06727 (Yolo County conviction).[1] On April 30, the Sonoma Superior Court ordered appellant's temporary removal from Yolo County to Sonoma County.

On June 16, 2009, the court found appellant in violation of his probation in *LeFever 1*, *LeFever 3* and *LeFever 4* in light of his Yolo County conviction. He was sentenced to seven years in state prison as follows: the upper four-year term in *LeFever 3*, plus one year (one-third the midterm) in *LeFever 4*, plus eight months (one-third the midterm) in *LeFever 1*. In addition, appellant was resentenced on the Yolo County conviction to a consecutive 16-month term (one-third the midterm).

Appellant filed timely appeals from the execution of sentence in *LeFever 1*, *LeFever 3* and *LeFever 4*.

DISCUSSION

Appellant contends the trial court lost jurisdiction under Penal Code section 1203.2a (hereafter, section 1203.2a) to order execution of sentence for his convictions in *LeFever 1*, *LeFever 3* and *LeFever 4*.[2]

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[1] Appellant was sentenced in Yolo Superior Court to two years in prison on the Yolo County conviction.

[2] Section 1203.2a provides:

"If any defendant who has been released on probation is committed to a prison in this state or another state for another offense, the court which released him or her on probation shall have jurisdiction to impose sentence, if no sentence has previously been imposed for the offense for which he or she was granted probation, in the absence of the defendant, on the request of the defendant made through his or her counsel, or by himself or herself in writing, if such writing is signed in the presence of the warden of the prison

Section 1203.2a permits a defendant who is on probation and is later committed to prison on another offense, to ask the trial court that originally placed him on probation, to revoke probation and impose sentence. "The purpose of section 1203.2a is 'to provide a

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in which he or she is confined or the duly authorized representative of the warden, and the warden or his or her representative attests both that the defendant has made and signed such request and that he or she states that he or she wishes the court to impose sentence in the case in which he or she was released on probation, in his or her absence and without him or her being represented by counsel.

"The probation officer may, upon learning of the defendant's imprisonment, and must within 30 days after being notified in writing by the defendant or his or her counsel, or the warden or duly authorized representative of the prison in which the defendant is confined, report such commitment to the court which released him or her on probation.

"Upon being informed by the probation officer of the defendant's confinement, or upon receipt from the warden or duly authorized representative of any prison in this state or another state of a certificate showing that the defendant is confined in prison, the court shall issue its commitment if sentence has previously been imposed. If sentence has not been previously imposed and if the defendant has requested the court through counsel or in writing in the manner herein provided to impose sentence in the case in which he or she was released on probation in his or her absence and without the presence of counsel to represent him or her, the court shall impose sentence and issue its commitment or shall make other final order terminating its jurisdiction over the defendant in the case in which the order of probation was made. If the case is one in which sentence has previously been imposed, the court shall be deprived of jurisdiction over defendant if it does not issue its commitment or make other final order terminating its jurisdiction over defendant in the case within 60 days after being notified of the confinement. If the case is one in which sentence has not previously been imposed, the court is deprived of jurisdiction over defendant if it does not impose sentence and issue its commitment or make other final order terminating its jurisdiction over defendant in the case within 30 days after defendant has, in the manner prescribed by this section, requested imposition of sentence.

"Upon imposition of sentence hereunder the commitment shall be dated as of the date upon which probation was granted. If the defendant is then in a state prison for an offense committed subsequent to the one upon which he or she has been on probation, the term of imprisonment of such defendant under a commitment issued hereunder shall commence upon the date upon which defendant was delivered to prison under commitment for his or her subsequent offense. Any terms ordered to be served consecutively shall be served as otherwise provided by law.

"In the event the probation officer fails to report such commitment to the court or the court fails to impose sentence as herein provided, the court shall be deprived thereafter of all jurisdiction it may have retained in the granting of probation in said case."

mechanism by which the probationary court [can] consider imposing a concurrent sentence, and to "preclude[] inadvertent imposition of consecutive sentences by depriving the court of further jurisdiction over the defendant" when the statutory time limits are not observed. [Citation.]' [Citation.]" (*People v. Murray* (2007) 155 Cal.App.4th 149, 157 (*Murray*).)

Section 1203.2a sets forth the procedure for requesting sentencing and the timelines that must be followed when such a request is made. The procedures and deadlines differ depending on the procedural posture of the case, i.e., whether, as in this case, sentence was imposed but execution of the sentence was suspended and probation granted, or where imposition of sentence was suspended and probation was granted. As recognized by our Supreme Court, "section 1203.2a provides for [three] distinct jurisdictional clocks: (1) the probation officer has 30 days from the receipt of written notice of defendant's subsequent commitment within which to notify the probation-granting court . . . ; (2) the court has 30 days from the receipt of a valid, formal request from defendant within which to impose sentence, if sentence has not previously been imposed . . . ; and (3) *the court has 60 days from the receipt of notice of the confinement to order execution of sentence (or make other final order) if sentence has previously been imposed* . . . . Failure to comply with any one of these three time limits divests the court of any remaining jurisdiction." (*In re Hoddinott* (1996) 12 Cal.4th 992, 999, italics added.)

" '[L]oss of jurisdiction over a convicted felon is a severe sanction which courts have been unwilling to apply unless the sentencing court's jurisdiction has been ousted by strict compliance with the statute. [Citations.]' [Citations.]" (*People v. Hall* (1997) 59 Cal.App.4th 972, 981 (*Hall*).)

Because appellant had already been sentenced with execution suspended, the trial court was required to issue its commitment within 60 days of being informed by the probation officer or receiving certification by an authorized prison representative of appellant's subsequent prison commitment. (§ 1203.2a; *In re Walters* (1995) 39

Cal.App.4th 1546, 1554, disapproved on other grounds in *In re Hoddinott, supra*, 12 Cal.4th at p. 1005.)

Appellant argues that the court was without jurisdiction to order execution of his sentence on June 16, 2009, because June 16 was more than 60 days after April 14, when the court received notice of his confinement.[3] The People reject the argument, asserting that the April 14 document relied on by appellant does not strictly comply with section 1203.2a.

On April 14, 2009, the Sonoma Superior Court "received," but did not file, an April 8 letter to it from the Correctional Case Records Manager at the California Correctional Center in Susanville regarding *LeFever 4*. The April 8 letter states, "Attached documents are being forwarded pursuant to Section 1203.2a of the California Penal Code." The attached documents are two identical form "REQUEST[S] FOR DISPOSITION OF PROBATION, WAIVER OF APPEARANCE AND RIGHT TO ATTORNEY (P.C. 1203.2a)" as to *LeFever 4* (hereafter, request forms). The request forms were addressed to both the Sonoma Superior Court and the Sonoma County probation officer and state that pursuant to section 1203.2a, "this is to notify you of my present imprisonment and to request the [c]ourt to: [¶] . . . [¶] b. Execute sentence at this time in the event a sentence was previously imposed and execution thereof suspended." The request forms, signed by appellant, contain an attestation clause signed by correctional counselor G.W. Bera and are dated April 6, 2009. The attestation clause states that Bera, the duly authorized representative of the Susanville Correctional Center warden, attests that appellant "signed th[ese] request[s] in [Bera's] presence and that he . . . wishes the [c]ourt to execute sentence . . . in the case in which he was released on probation." Underneath Bera's signature the request forms state: "The following

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[3] The People argue that appellant has waived this claim of error because he failed to raise it at the June 16, 2009 sentencing hearing. While matters not raised below are ordinarily waived, appellant's section 1203.2a argument challenges the trial court's jurisdiction to impose any sentence on him and is, therefore, nonwaivable. (See *People v. Blanchard* (1996) 42 Cal.App.4th 1842, 1847.)

information is furnished to assist in the processing of the defendant's request: [¶] A. The defendant's expected date of release from his . . . current term of confinement is currently set at **12/31/2009**. [¶] B. (If known) The date of *commission* of the crime(s) for which the defendant is currently undergoing sentence is **12/13/2008**." (Boldface, italics and underscoring in original.)

Appellant argues that, pursuant to section 1203.2a, his sentencing had to occur within 60 days of April 14, 2009, the date of receipt of the request forms by the Sonoma Superior Court.[4] He asserts that his sentencing on June 16 was beyond the 60-day deadline and is, therefore, void and of no effect.

Section 1203.2a "is not a model of clarity" (*Murray, supra*, 155 Cal.App.4th at p. 154, fn. omitted), and interpreting it has been referred to as "an unenviable chore" (*People v. Holt* (1991) 226 Cal.App.3d 962, 965). "The statute reflects a disregard for careful drafting and contempt for the English language. Meandering clauses in which the subject and predicate are ruthlessly separated from one another, jumps in thought and logic, and a lack of organization make the going difficult. . . . [¶] . . . [¶] The first paragraph could be used as a device to drive surplus students out of law school. It consists of one sentence, one hundred seventy-seven words long." (*Id.* at pp. 965, 966; accord, *In re Hoddinott, supra*, 12 Cal.4th at p. 1003, fn. 7; *In re Walters, supra*, 39 Cal.App.4th at pp. 1553-1554, fn. 6.) Despite encouragement to the Legislature to revise the statute (see *Murray, supra,* 155 Cal.App.4th at p. 158), it has not been amended since 1989.

In *Hall,* as here, the defendant challenged the court's jurisdiction to order execution of his previously imposed sentence, arguing that the 60-day jurisdictional clock in section 1203.2a was triggered by notice of his imprisonment, without specific reference to incarceration due to a subsequent offense. (*Hall, supra,* 59 Cal.App.4th at pp. 982-983.) Division Two of this court stated, "In determining the meaning of the

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[4] Since the 60th day following April 14, 2009, was June 13, a Saturday, the 60th day would be deemed to be Monday, June 15.

terms 'commitment' and 'confinement' in paragraphs two and three [of section 1203.2a], we look to the beginning of the statute, which defines its scope, and places these two terms in the proper context." (*Id.* at p. 983.) In rejecting the defendant's contention that notification of his imprisonment was sufficient notice to trigger the 60-day time limit, *Hall* stated: "Considering the context of the statute and its purpose, we conclude that the notice of imprisonment or confinement referred to in the second and third paragraphs of section 1203.2a must inform the court that a defendant has been committed to prison *for another offense*. It is not sufficient for the notice to state merely that the defendant has been transferred to prison since, under modern penal practices as sanctioned by the Penal Code, a defendant may be transferred to prison for reasons other than commitment for another offense. (See, e.g., [Pen. Code,] § 1203.03 [order placing defendant in diagnostic facility of Department of Corrections].)" (*Id.* at p. 983.) The notice of probation violation and court action filed in *Hall* stated only that the defendant had been transferred to the California Institute for Men at Chino, but did not inform the court that the defendant had been committed to prison for another offense. Thus, *Hall* concluded that under the applicable rule of strict construction, the notice failed to comply with section 1203.2a and therefore did not trigger the 60-day jurisdictional clock. (*Hall*, at p. 983.)

Pursuant to *Hall*, construing paragraph three of section 1203.2a in light of paragraph one, the probation officer, or, in this case, the warden's representative, must certify that the defendant is in prison on another offense. Here, the April 6, 2009 attestation by the warden's representative on the request forms does not state that appellant is in prison, much less that appellant is in prison on another offense. Instead, the attestation states, "I, G.W. Bera, certified that I am the duly authorized representative of the [w]arden and ATTEST that [appellant] made and signed th[ese] request[s] in my presence and that [he] states that [he] wishes the [c]ourt to execute sentence, or make disposition of [his] probation as required by law in [his] absence and without [his] being represented by an attorney at law in this case in which he was released on probation."

Below Bera's attestation clause, the request forms state: "The following information is furnished to assist in the processing of the defendant's request: [¶] A. The

defendant's expected date of release from [his] current term of confinement is currently set at **12/31/2009**. [¶] B. (If known) The date of *commission* of the crime(s) for which the defendant is currently undergoing sentence is **12/13/2008**." However, there is no indication on the request forms that this information was included on the forms by Bera or certified by him.[5] Construing the request forms strictly, as we must, we conclude they fail to comply with section 1202.2a and, therefore, do not trigger the 60-day jurisdictional clock. Consequently, the court was not void of jurisdiction to sentence appellant on June 16, 2009.

DISPOSITION

The judgment is affirmed.

SIMONS, J.

We concur.

JONES, P.J.

NEEDHAM, J.

[5] In a footnote in their supplemental brief to this court, the People concede, "In a different case, one where the state gives a prisoner a defective form and then argues that the defect precludes relief for the defendant . . . [,] . . . it may well be that the forfeiture doctrine would prevent the state from arguing that the defect in the form precluded relief for the defendant." However, in this case, the record before us does not reveal how or from whom appellant obtained the request forms. Similarly, some portions of the request forms are typewritten, and the record does not reveal who filled in the typewritten portions. The record does not establish that the state provided appellant with the request forms or show the circumstances under which he might have obtained them. Therefore, application of the forfeiture doctrine is unwarranted.